7 Phil. 272

[G.R. No. 2882. January 02, 1907]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EDUARDO MONTIEL, DEFENDANT AND APPELLANT.

D E C I S I O N

CARSON, J.:

The only question raised on appeal in this case is that of twice in jeopardy. It appears that at the trial of the cause in the Court of First Instance the plea of twice in jeopardy was interposed and, being overruled, the accused offered no defense and was convicted and sentenced for the crime with which he was charged.

From the evidence of record it appears that the accused was arrested and tried by the justice of the peace of the municipality of Romblon for the crime of theft (*hurto*), and that while the justice of the peace was hearing the case, the accused attacked the justice of the peace and wounded him in the shoulder with a penknife, from which wound the justice of the peace had not recovered at the time of the trial of this case. It appears, furthermore, that the justice of the peace was in the act of dictating the sentence which he had pronounced against the accused, Eduardo Montiel, at the time when the offense was committed.

An information was filed charging the accused with the crimes of frustrated murder and attempt against an authority while in the exercise of the duties of his office. The accused demurred to the complaint on the ground that it charged him with more than one offense. The court sustained the demurrer and ordered the fiscal to amend the information. The fiscal amended the information, omitting the charge for an attempt against an authority while in the exercise of the duties of his office and later presented a second complaint charging the accused with that offense as defined and penalized in article 249 of the Penal Code.

No further proceedings were had upon the amended complaint charging the accused with

frustrated murder and the fiscal proceeded upon the new complaint for an attempt against an authority. The accused insists that a warrant of arrest was issued, that he was imprisoned upon the original information charging him with this offense, and therefore that he had been placed in jeopardy under that complaint and that he should not be convicted upon a second information charging the same offense. This court has already decided in the case of the United States *vs*. Ballentine[1] (No. 1898, decided August 17, 1905) that an accused can not be considered in jeopardy in the meaning of that term as used in the act of Congress of July 1, 1902, until the trial has actually begun—that is to say, until the accused has been arraigned and the first witness called. In this case the original complaint was dismissed, on defendant's demurrer, before his trial on that complaint had begun, and he was never arraigned thereon nor were witnesses called either for the prosecution or the defense.

The plea of twice in jeopardy can not be maintained, and the judgment and sentence of the trial court is, therefore, affirmed, with the costs of this instance against the appellant. After expiration of ten days let judgment be entered in accordance herewith and ten days thereafter the record in the case remanded to the court of its origin for execution. So ordered.

Arellano, C. J., Torres, Mapa, Willard, and *Tracey, JJ.,* concur.

---

[1] 4 Phil. Rep., 672.

Date created: May 22, 2014